

**261-UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION**

NICOLAE MIDONE)	
)	
Plaintiff,)	
)	
v.)	
)	Court No. 1:22-cv-04302
PEPSICO, INC., a foreign corporation,)	
)	
Defendant.)	

NOTICE OF REMOVAL

NOW comes the Defendant, PEPSICO, INC., a foreign corporation (“Pepsico”), by and through its attorneys, Patton & Ryan, LLC, for its Notice of Removal to the United States District Court for the Northern District of Illinois Eastern Division pursuant to 28 U.S.C. §§1332, 1441, and 1446. The case No 2022L005714, *Nicolae Midone v. Pepsico, Inc.* was previously filed by the Plaintiff NICOLAE MIDONE (“Midone”) in the Circuit Court of Cook County, Illinois, Law Division. In support thereof, Defendant states as follows:

Introduction

1. On June 24, 2022 the case *Nicolae Midone v. Pepsico, Inc.* was filed in the Circuit Court of Cook County, Illinois, case No 2022L005714 by The Law Office of Alexander Gruzmark, Ltd. *See Exhibit 1.*
2. Pepsico is a foreign corporation properly registered at 160 mine Lake Ct., Suite 200, Raleigh, NC 27615, with its principal place of business (headquarters) at 700 Anderson Hill Rd., Purchase, NY 10577. *See Exhibit 2.*
3. On July 14, 2022 Defendant’s registered agent in Illinois was served with Service of Process (Summons and Complaint). The registered agent is CT Corporation System, 208 S. La Salle St., Suite 814, Chicago, IL 60630. *See Exhibit 3.*

4. In its Complaint plaintiff alleged damages in excess of \$50,000.00 plus costs. *See Exhibit 1*.

Removal is Timely

5. Pepsico was first served with Service of Process in connection with this lawsuit on July 14, 2022, through its registered agent in Illinois, CT Corporation System. *See Exhibit 3*. This Notice of Removal is filed within thirty (30) days of the date of service, therefore, removal is timely pursuant to 28 U.S.C. §1446(b). *See Poulos v. Naas Foods, Inc.*, 959 F.2d 69, 71 (7th Cir. 1992) (“notice of removal may be filed within thirty days after receipt by the defendant, through service [of process]”).

Venue Is Proper in This Court

6. Any civil action brought in a State court of which the District Courts of the United States have original jurisdiction, may be removed by the defendant, to the District Court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. §1441(a). The case *Nicolae Midone v. Pepsico, Inc.* is pending in Cook County, IL state court. Cook County is located within United States District Court for the Northern District of Illinois.

Subject Matter Jurisdiction Is Proper

7. The District Courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. 28 U.S.C. §1332(a)(1).

I Diversity of Citizenship Exists Among Parties

8. Plaintiff Nicolae Midone is a citizen of Illinois. “Domicile must be determined from the totality of the circumstances, and courts generally focus on such indicia as residence, voting practices, location of personal and real property, bank and brokerage accounts, membership in associations, place of employment, driver’s license, auto registration, and payment of state taxes.” *Mader v. Motorola, Inc.*, 175 F.3d 1020 (7th Cir. 1999). Here, Plaintiff Midone possesses a commercial class A driver’s license issued by the State of Illinois, D/L #M35062074085, with an address of residence in Illinois. Plaintiff also owns two

businesses in Illinois, Midone Corp. and Midone Development LLC. Plaintiff owns a vehicle registered in Illinois on his name. *See Exhibit 4*.

9. Defendant Pepsico is a foreign corporation organized under the laws of North Carolina, and with its principal place of business in New York. *See Exhibit 2*. “[A] corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80-97 (2010). A corporation’s principal place of business is its “nerve center.” *See Id.*
10. In sum, Plaintiff is domiciled in Illinois, and Defendant is domiciled in North Carolina and New York, but not Illinois. Accordingly, because Plaintiff and Defendant are citizens of different states, complete diversity exists under 28 U.S.C. §1332.

II Amount of Controversy Has Been Satisfied

11. In the event of removal, the amount in controversy is determined on the day the suit was removed. *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 510–11 (7th Cir. 2006). At the time of removal the burden of proof regarding the jurisdictional requirements for the amount of controversy is on the defendant seeking removal. *Meridian Sec. Ins. Co. v. Sadowski*, 441 F.3d 536, 542 (7th Cir. 2006). “Competent proof” requires that factual allegations must be established to a reasonable probability that jurisdiction exists. *See Id.* Even though plaintiff’s complaint lacked specific amount of damages but pled damages in excess of \$50,000.00, based on plaintiff’s claims to recover medical bills, lost wages, and alleged injuries it is evident that the amount in controversy exceeds jurisdictional limit. *Roman v. Grafton Transit, Inc.*, 948 F.Supp. 736 (N.D. Ill. 1996). Here, in his initial complaint Plaintiff demanded damages in excess of \$50,000.00 plus costs of the action. Moreover, Plaintiff alleged “serious and permanent injuries,” “endured pain and suffering; incurred substantial costs for necessary medical care and treatment for his injuries; incurred lost wages” and “continues to be disabled.” *See Exhibit 1*. Furthermore, Plaintiff has presented to Defendant in writing a claim to recover special damages of medical bills and lost wages in the total amount of \$85,444.57. *See Exhibit 5*. Clearly, Plaintiff demands a certain

amount of damages at least of \$85,444.57, therefore, Defendant believes in good faith that the amount in controversy exceeds \$75,000.00 pursuant to 28 U.S.C. §1332(a).

Filing of Removal Documents

12. Under 28 U.S.C. §1446(d), contemporaneous to the removal of this action, Defendant has provided written notice of removal to Plaintiff's counsel and has filed a Notice of Filing of the Notice of Removal with the Circuit Court of Cook County, IL, First District. A true and correct copy of the state-court Notice of Filing the Notice of Removal is attached as *Exhibit 6*.

Conclusion

For these reasons, Defendant Pepsico respectfully notices the removal of this action from the Circuit Court of Cook County, IL, First District to the United States District Court for the Northern District of Illinois Eastern Division pursuant to 28 U.S.C. §§1332, 1441, 1446 and notifies the Circuit Court thereof.

/s/ Todd M. Porter

Todd M. Porter

Patton & Ryan LLC

Counsel for Defendant

John W. Patton, Jr.

Todd M. Porter

Serge Petukh

Patton & Ryan, LLC

330 N. Wabash Ave., Suite 3800

Chicago, Illinois 60611

Phone: (312) 261-5160

Fax: (312) 261-5161

jpatton@pattonryan.com

tporter@pattonryan.com

spetukh@pattonryan.com

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2022, I electronically filed **Defendant's Notice of Removal to Federal Court**, as required by Fed.R.Civ.P. 5(a) in a manner authorized by Fed.R.Civ.P. 5(b) and (c), with the Circuit Court of Cook County, IL using the CM/ECF System which will send notification of such filing to the following:

Law Office of Alexander Gruzmark Ltd.

Andrew J. Long
Attorneys for the Plaintiff
1701 E Lake Ave., Suite 200
Glenview, IL 60025
Ph. 847-729-7660
Email: lawoffice@gruzmarklaw.com

/s/ Isabella Casella

Isabella Casella, Legal Assistant

John W. Patton, Jr.
Todd M. Porter
PATTON & RYAN LLC
330 North Wabash Avenue, Suite 3800
Chicago, Illinois 60611
Phone: (312) 261-5160
Fax: (312) 261-5161
jpatton@pattonryan.com
tporter@pattonryan.com

EXHIBIT 1

* 5 0 1 8 3 2 2 0 *
FILED
6/24/2022 4:24 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L005714
Calendar, B
18432286

Firm I.D. No. 41726

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

NICOLAE MIDONE,)
)
Plaintiff,) 2022L005714
vs.) No.
)
PEPSICO, INC., a foreign corporation,)
)
Defendant.)

COMPLAINT AT LAW

NOW COMES the Plaintiff, NICOLAE MIDONE, by and through his attorneys,
The Law Office of Alexander Gruzmark, Ltd., for his Complaint against the Defendant,
PEPSICO, INC., and states as follows:

1. On November 16, 2020 and at all other relevant times, Defendant PEPSICO, INC. was a North Carolina Corporation that owned, operated, managed and maintained a bottling plant located at 650 W. 51st Street, Chicago, Illinois.
2. On November 16, 2020, at approximately 10:00 p.m., Plaintiff NICOLAE MIDONE was engaged in his business as a truck driver, lawfully on the aforesaid premises at loading dock 18, to receive approximately 23 pallets of PepsiCo beverage products that had been loaded into Plaintiff's semi-trailer by agents of Defendant PEPSICO, INC.
3. At said time and place, after being advised that his trailer had been loaded, Plaintiff moved his truck out of loading dock 18 and proceeded to close the trailer doors when he noticed that two load bars, needed to block and brace the load, were missing from the back of his trailer.
4. At said time and place, Plaintiff advised an agent of Defendant PEPSICO,

INC. that his load bars were missing and Plaintiff was then directed to return to loading dock 18 to retrieve them from another agent of Defendant PEPSICO, INC.

5. At said time and place, Plaintiff NICOLAE MIDONE walked down the darkened loading dock 18 to retrieve his load bars at which time, the rolling overhead door abruptly opened, and an agent of Defendant PEPSICO, INC. dropped the load bars off of the loading dock and onto the Plaintiff, who was then and there standing below.

6. On said date and at all other times relevant hereto Defendant PEPSICO, INC., through its agents, had a duty to exercise reasonable care in the ownership, operation, management and maintenance of its business premises to avoid injuries to persons lawfully on the premises.

7. On said date and at all other times relevant hereto Defendant PEPSICO had the duty to provide sufficient lighting in the loading docks on its premises so persons lawfully on the premises can safely avoid hazards and other dangerous conditions on the premises.

8. Notwithstanding said duties, at said time and place, Defendant PEPSICO, INC., through its agents, was guilty of one or more of the following careless and negligent acts or omissions:

(a) failing to sufficiently illuminate work spaces within its premises such as loading dock 18 when it knew or should have known that insufficient lighting caused a foreseeable risk of harm to persons lawfully on the premises;

(b) carelessly dropping large and unwieldy loading bars off of a loading dock and onto the Plaintiff;

(c) removing necessary equipment from Plaintiff's trailer and then requiring him to retrieve same from a poorly illuminated and hazardous work space;

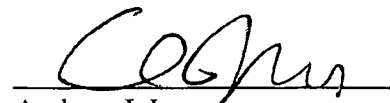
(d) was otherwise negligent in the ownership, operation, management and maintenance of its premises.

9. As a direct and proximate result of one or more of the foregoing careless and negligent acts or omissions of Defendant PEPSICO, INC., Plaintiff NICOLAE MIDONE was hit by the loading bars and caused to fall in the loading dock and sustain serious and permanent injuries.

10. As a direct and proximate result of his injuries, Plaintiff NICOLAE MIDONE endured and continues to endure pain and suffering; incurred substantial costs for necessary medical care and treatment for his injuries; incurred lost wages and/or salaries and has been and continues to be disabled and prevented from attending to his life's normal affairs and duties.

WHEREFORE, Plaintiff NICOLAE MIDONE prays that judgment be entered in his favor and against the Defendant, Defendant PEPSICO, INC., in an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), plus the costs of this action.

Respectfully Submitted,



Andrew J. Long,
One of Plaintiff's attorneys

GRUZMARK LAW, LTD.
Attorneys for Plaintiff
1701 East Lake Ave., Suite 200
Glenview, Illinois 60025
847-729-7660
Email: lawoffice@gruzmarklaw.com
Firm I.D. No.: 41726

EXHIBIT 2

• File an Annual Report/Amend an Annual Report • Upload a PDF Filing • Order a Document Online • Add Entity to My Email Notification List • View Filings • Print a Pre-Populated Annual Report form • Print an Amended a Annual Report form

Business Corporation

Legal Name

Pepsico, Inc.

Prev Legal Name

Sliceco, Inc.

Information

SosId: 0198463

Status: Current-Active ⓘ

Date Formed: 11/13/1986

Citizenship: Domestic

Fiscal Month: December

Annual Report Due Date: April 15th

Current**Annual Report Status:**

Registered Agent: CT Corporation System

Addresses

Reg Office

160 Mine Lake Ct Ste 200
Raleigh, NC 27615-6417

Reg Mailing

160 Mine Lake Ct Ste 200
Raleigh, NC 27615-6417

Mailing

PepsiCo, Inc.,700 Anderson Hill Road
Road Purchase, NY 10577

Principal Office

PepsiCo, Inc.,700 Anderson Hill Road
Road Purchase, NY 10577

Officers

Treasurer

Ada Cheng

PepsiCo, Inc.,700 Anderson Hill Road

Secretary

David Flavell

PepsiCo, Inc., 700 Anderson Hill

Road Purchase NY 10577

Road Purchase NY 10577

President

Ramon Laguarta

PepsiCo, Inc., 700 Anderson Hill Road

Road Purchase NY 10577

Stock

Class: Common

Shares: 3600000000

Par Value 0

EXHIBIT 3



Service of Process Transmittal Summary

TO: Pepsop Intakeparalegal
PepsiCo, Inc.
700 Anderson Hill Rd
Purchase, NY 10577-1444

RE: Process Served in Illinois

FOR: Pepsico, Inc. (Domestic State: NC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: NICOLAE MIDONE // To: Pepsico, Inc.

DOCUMENT(S) SERVED: Summonses, Complaint, Affidavit

COURT/AGENCY: Cook County Circuit Court, IL
Case # 2022L005714

NATURE OF ACTION: Personal Injury - Failure to Maintain Premises in a Safe Condition - 09/16/2020

PROCESS SERVED ON: C T Corporation System, Chicago, IL

DATE/METHOD OF SERVICE: By Process Server on 07/14/2022 at 03:56

JURISDICTION SERVED: Illinois

APPEARANCE OR ANSWER DUE: Within 30 days after service, not counting the day of service

ATTORNEY(S)/SENDER(S): Andrew J. Long
GRUZMARK LAW, LTD.
1701 East Lake Ave., Suite 200
Glenview, IL 60025
847-729-7660

ACTION ITEMS: CT has retained the current log, Retain Date: 07/15/2022, Expected Purge Date: 07/20/2022

Image SOP

REGISTERED AGENT CONTACT: C T Corporation System
208 South LaSalle Street
Suite 814
Chicago, IL 60604
800-448-5350
MajorAccountTeam1@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT

EXHIBIT 4



Office of the Secretary of State Jesse White
ilsos.gov

Corporation/LLC Search/Certificate of Good Standing

LLC File Detail Report

File Number	08162883
Entity Name	MIDONE DEVELOPMENT LLC
Status	ACTIVE

Entity Information

Principal Office
2301 BEAU MONDE TERRACE #205
LISLE, IL 605320000

Entity Type
LLC

Type of LLC
Domestic

Organization/Admission Date
Friday, 11 October 2019

Jurisdiction
IL

Duration
PERPETUAL

Agent Information

Name

MIDONE CORP

Address2301 BEAU MONDE TER APT 205
LISLE , IL 60532**Change Date**

Friday, 11 October 2019

Annual Report**For Year**

2021

Filing Date

Tuesday, 12 October 2021

Managers**Name****Address**MIDONE, NICOLAE
2301 BEAU MONDE TERRACE 205
LISLE, IL 605320000**Name****Address**VLADIMIR SIMIONOV
2301 BEAU MONDE TERRACE APT 20
LISLE, IL 60532**Series Name**

NOT AUTHORIZED TO ESTABLISH SERIES

[Return to Search](#)[File Annual Report](#)

Driver's license information

THIS IS AN OFFICIAL CERTIFICATION OF THE DMV RECORD ON FILE WITH THIS DEPARTMENT.

PERSONAL DATA REPORTED:**NAME:** MIDONE, NICOLAE**ADDRESS:** 2301 BEAU MONDE TER APT 205, Lisle, DUPAGE, IL 60532**DATE OF BIRTH:****PHYSICAL DESCRIPTION:****LICENSE REPORTED:****STATE:** IL**LICENSE NUMBER:** M35062074085**ISSUE DATE:** 08/21/2021**EXPIRATION DATE:** 03/15/2023**STATUS:** VALID**CLASS:** A**RESTRICTIONS:** NONE**ENDORSEMENTS:** SEE BELOW**HISTORY REPORTED:********* PERSONAL DESCRIPTION *******

HEIGHT: 510 WEIGHT: 230 EYES: GRN HAIR: BRWN

******* LICENSE(S) DATA *******

LICENSE NUMBER: M35062074085

(1) LICENSE TYPE: COMMERCIAL
 STATE CLASS CODE: A
 LICENSE CLASS: COMB VEH > 26K WITH TRAILERS > 10K
 STATUS: VALID
 ORIGINAL ISSUE DATE: 05/31/2019
 ISSUE DATE: 08/21/2021
 EXPIRATION DATE: 03/15/2023
 RESTRICTIONS: NONE
 ENDORSEMENTS: TANK VEHICLE
 DOUBLE/TRIPLE TRAILER

******* DRIVING HISTORY *******

CONVICTION(S):

(1) TYPE: OUT OF STATE CONVICTION
 VIOLATION DATE: 08/06/2020
 CONVICTION DATE: 11/09/2020
 CMV INVOLVED: Y
 STATE JURISDICTION: IA
 NATIVE OFFENSE: C72
 NDR OFFENSE: S92

REPORT CONTINUED[NEXT](#)

ilsos.gov is now ilsos.gov



Office of the Secretary of State Jesse White
ilsos.gov

Corporation/LLC Search/Certificate of Good Standing

Corporation File Detail Report

File Number 71880605

Entity Name MIDONE CORP.

Status
NOT GOOD STANDING

Entity Information

Entity Type
CORPORATION

Type of Corp
DOMESTIC BCA

Incorporation Date (Domestic)
Tuesday, 19 June 2018

State
ILLINOIS

Duration Date
PERPETUAL

Agent Information

Name

NICOLAE MIDONE

Address

2301 BEAU MONDE TER APT 205
LISLE , IL 60532

Change Date

Thursday, 13 June 2019

Annual Report

Filing Date

00/00/0000

For Year

2022

Officers

President

Name & Address

NICOLAE MIDONE 2301 BEAU MONDE TERRACE # 205 LISLE IL 60532

Secretary

Name & Address

NICOLAE MIDONE

[Return to Search](#)

[File Annual Report](#)

EXHIBIT 5

LAW OFFICE OF ALEXANDER GRUZMARK, LTD.
ATTORNEYS AT LAW

1701 East Lake Avenue, Suite 200
Glenview, Illinois 60025
Telephone: 847.729.7660
Facsimile: 847.729.7661

September 27, 2021

Pepsico Headquarters
700 Anderson Hill Road
Purchase, New York 10577

Re: *Midone vs. Pepsico*
Date of Accident:
Place of Accident:
Our Client:
Our File No.:

November 16, 2020
Chicago, Illinois
Nicolae Midone
MIDO-21-151

Dear Sir or Madam:

Enclosed please find items of special damages pertinent to the above-mentioned claim.

Nicolae Midone:

Edward Hospital:	\$ 3,732.00
Naperville Radiologists, SC:	\$ 566.00
Edward Hospital:	\$ 4,972.00
DuPage Medical Group:	\$ 3,802.00
Willow Festival Dental:	\$ 8,670.00
Eleonora Kul Lipski MD SC:	\$ 80.00
Northwest Orthopedic Surgery:	\$ 732.00
Pharmacy:	\$ 20.57
Wage loss:	\$ 62,870.00
TOTAL:	\$ 85,444.57

Please contact the undersigned within 28 days from the date of this letter in order to amicably resolve this claim.

Very truly yours,
LAW OFFICES OF ALEXANDER GRUZMARK, LTD.



Alexander Gruzmark
AG: ng

EXHIBIT 6

**CIRCUIT COURT OF COOK COUNTY, STATE OF ILLINOIS
LAW DIVISION**

NICOLAE MIDONE)	
)	
Plaintiff,)	
)	Case No2022L005714
v.)	
)	
PEPSICO, INC., a foreign corporation,)	
)	
Defendant.)	

**NOTICE OF FILING OF NOTICE OF REMOVAL TO THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS**

PLEASE TAKE NOTICE that Defendant, Pepsico, Inc., has removed this action to the United States District Court for the Northern District of Illinois by filing the attached Notice of Removal with the Clerk of the District Court on August 15, 2022.

This 15th day of August, 2022.

Respectfully submitted,

Patton & Ryan LLC

/s/ Todd M. Porter

Todd M. Porter

Firm ID: 40669

Counsel for Defendant

John W. Patton, Jr.
Todd M. Porter
Patton & Ryan, LLC
330 N. Wabash Ave., Suite 3800
Chicago, Illinois 60611
Phone: (312) 261-5160
Fax: (312) 261-5161
jpatton@pattonryan.com
tporter@pattonryan.com